

Welcome to the Department of Commerce Bureau of Industry and Security Export Regulations Training webinar series. Today's topic is License Exceptions in the Export Administration Regulations. In just a moment we'll be turning you over to our presenters. If you're watching live today, you'll have the opportunity to ask questions directly using the Ask a Question button just below the video window. Again, thank you for attending.

Now let's turn it over to our presenters.

Good afternoon and welcome to the Bureau of Industry and Security's webinar on License Exceptions. I'm Hillary Hess, Director of the Regulatory Policy Division at BIS, and I'm here with my colleagues, Bill Arvin of the Regulatory Policy Division and Tim Mooney of the Regulatory Policy Division.

Today we're going to conduct a 90-minute session on license exceptions in the Export Administration Regulations. And we're going to be talking about the most often-used license exceptions.

You can submit questions at any time using the directions that are on your screen, and after we're finished with the presentation, we will address those questions.

First what I'd like to do is talk about a few of the terms that we're going to be using. Export Administration Regulations, or EAR, that's Title 15 of the Code of Federal Regulations, Parts 730 through 774. We also will refer to the Commerce Control List, or CCL, and you'll notice that we do use acronyms pretty frequently. We will try to tell you what they are before we use them.

We'll talk about Export Control Classification Numbers, or ECCNs. In case you haven't seen one, we've got an example here that's 3A001. So an ECCN has got five characters. The first digit is the category, so three is Electronics. The second character is the product group, so the A in this example, it's an end item. The third character is the type of control, so the zero in this example, is a national security control. And then the last two characters, the 01 in this example, locate the ECCN on the list in order.

We'll also refer to General Prohibitions, which are found in Part 736 of the Export Administration Regulations, or EAR. And basically those are license requirements or other outright prohibitions.

Some other terms we'll use are export control reform, or ECR. And that's an initiative of the Administration wherein we're moving military items that are not, you know, critical, significant military items, from the jurisdiction of the International Traffic in Arms Regulations, or ITAR, which is 22 Code of Federal Regulations, Parts 120 through 130. So these military items would go from the ITAR to the EAR to take advantage of the greater flexibility under the EAR and to assist with interoperability between the United States and our close military allies.

Those items that are moved from the ITAR to the EAR will generally be found in what we call 600 Series ECCNs. For example, 9A610. And you can see that third character is a six, and that's what we're referring to when we talk about the 600 Series ECCNs.

So when you get started with license exceptions, you're actually kind of in the middle of a process. If you have something you need to get out of the country, you don't start with license exceptions. There are a number of steps you will have gone through before you get to the license exceptions.

First one is determine the jurisdiction of the items. So what we're talking about is items that are under the jurisdiction of the Department of Commerce, Bureau of Industry and Security, under the Export Administration Regulations. So in order to use these license exceptions, you do need to have items that are subject to the EAR.

You also want to have determined your ECCN. For purposes of the EAR, the ECCN is what you're dealing with. So you need to have classified your item, found its ECCN on the Commerce Control List, or

found that it is not, in fact, on the Commerce Control List and is designated as EAR99, which is an item that is subject to the EAR but is not on the Commerce Control List, or CCL.

Next, before you go to License Exceptions, you should have found a license requirement. What you do is go to your ECCN, you look under your license requirements, and it will give you certain columns, like NS Column 1, which is for National Security Control Column 1, or AT Column 1, Antiterrorism Column 1. Then you go to our Commerce Country chart, also in the EAR. You look at the column for your item, and you line it up with the row that has your country (or destination) in it. And if at the intersection of those two there's an X in the box, that's your license requirement.

Now just wanted to remind you that we are in DC here, so we may be experiencing sirens or other disruptions, so we'll just try to work through that. Stay with us, and we'll go back to your license requirements – meaning you will require an EAR authorization to proceed with the transaction.

So if there is – if you – remember what you've done, so far in this process of reviewing the EAR to determine your license requirements. You've gone to your ECCN, found your column, picked your country of destination, lined up the columns with the row that is your country, and if you found an X in the box, you've got a license requirement. So once you've found that X in the box, you've found your license requirement, now you're here, and you want to find out if a license exception is available. And that's what we're going to talk about now.

So what is a license exception? A license exception is an authorization to export or reexport or transfer in-country without a license. Now keep in mind that a license is an actual specific authorization for your company to export a specific item or a specific quantity of items to a particular end user in the country of destination for a particular end use. You've filled out all this information on our form, which is the BIS748P. You get access to that through our SNAP-R system, which is on our website. And you have applied to us for a specific license. And that is one way to handle it when you've found a license requirement.

But you may also be able to use a license exception, which is also an authorization; it's just not a specific one that you apply for. It's a published authorization with certain terms and conditions. And if you meet those terms and conditions, then you can use this general authorization without actually applying for a license.

Each exception that we're going to talk about has a three letter symbol that's used for export clearance purposes. For instance, it's part of your electronic export information (EEI) that you enter into the Automated Export System (AES), the Automated Customs Environment (ACE). You use it for export clearance getting the item out of the country. When using a license exception symbol you are making a legal representation to the U.S. Government that you have followed the steps we have outlined above and that the export meets all of the applicable terms and conditions of the license exception you are using to authorize the export.

A lot of people also use it for recordkeeping purposes, and we use it as kind of a shorthand. So the three letter symbol, this acronym, is attached to each license exception.

Now these are published general authorizations, but there are some cases that we'll talk about where you do actually need some type of paperwork. You don't fill out a license application, but you may need to do a notification, some kind of review, or obtain some type of support documentation prior to use of the license exception. And we'll talk about that later in this webinar.

One thing you want to start with is going through the restrictions on the use of all license exceptions broadly. And you can find these restrictions in Section 740.2. Part 740 of the Export Administration Regulations is where you find the license exceptions generally, and you should, before you use any of them, you want to look at Section 740.2. Reviewing Section 740.2 is important because if one of these general restrictions applies, you will not be able to use a license exception.

So when is use of a license exception restricted? You can find the list in Section 740.2. For starters, you cannot use a license exception if authorization has been suspended or revoked. Now this does not happen often, but when it does it can be for a whole range of reasons. It may be revoked for a particular company. It may be revoked for a particular country of destination. Or it could be completely revoked. You want to make sure that if this is the case, you're not trying to use that license exception.

While we're talking 600 Series items, which, as you'll remember, are those military items that have come over to the EAR from the ITAR, then you're not going to be able to use license exceptions to ship those to U.S. arms-embargoed countries, which are identified in Country Group D:5 in Supplement No. 1 to part 740 of the EAR.

In some cases an export will be subject to a general prohibition, a license requirement or other outright prohibition, that is not eligible for a license exception, such as an export that involves a "knowing" violation of the EAR (such as that restricted under General Prohibition No. 10 and Section 764.2(e) of the EAR). In some cases, for instance certain end uses related to weapons of mass destruction, a denied person on the Denied Persons List (DPL), the license exceptions are simply not available for this type of transaction. In these cases, the nature of the end use or party to the transaction raises sufficient concern that it would not be warranted to authorize such an export, reexport or transfer (in-country) under a license exception.

In other cases, the particular item may not have any or a lot of license exceptions available. Electronic surveillance equipment. Very, very narrow use of license exceptions just for the U.S. Government. Crime control items. These items are of concern, usually for human rights reasons, and there's a limit to the destinations that you can send them to without a license. Most items that are controlled for missile technology reasons are not eligible for license exceptions. Most of the time they are going to need an individual license.

And embargoed destinations in most cases are not good destinations to use license exceptions. There are a few sometimes very narrowly defined uses of license exceptions for sanctioned destinations, but what you would need to do is go to a separate part of the Export Administration Regulations, Part 746, look up your actual sanctioned or embargoed country or destination such as Syria, and look to see in that Syria section which license exceptions are authorized for use to that destination.

In the course of using license exceptions, sometimes you will see individual countries called out by name. But generally we use country groups. Group A is characterized by fellow members of international export control regimes and close partners such as NATO allies. Country Group B is less restricted, is less than Country Group D, which contains a lot of what we call countries of concern, sometimes targets of the international control regimes. Group E has the least amount of license exceptions available. Again these are your terrorist-supporting countries, and your embargoed or sanctioned countries. That's Country Group E, and there are significantly fewer license exceptions available, and in the case of a country such as Iran there are simply no EAR license exceptions available.

These country groups are found in Supplement No. 1 to Part 740. We'll talk a little bit more about what they mean during today's webinar.

So when I said international control regimes in Country Group A, I was talking about the Wassenaar Arrangement, which controls items for national security reasons. And these are items that have the potential to be used in conventional arms uses. We are talking about the Missile Technology Control Regime (MTCR), which controls items that can be used for missiles and launch vehicles. The Australia Group (AG), which controls items for chemical, biological warfare reasons. The Nuclear Suppliers Group (NSG), which controls nuclear items. So the members of these regimes, the U.S. is a member of these regimes, generally these are found in the different subdivisions of Country Group A (i.e., Country Groups A:1, A:2, A:3 and A:4).

Now, as I mentioned, Country Group B is a broader group. It includes countries that are not of concern for national security reasons. The Country Group A countries are also in Country Group B, but Country

Group B is mutually exclusive with Country Group D:1. D:1 is the countries of concern for national security reasons. And some of the other Country Group D subgroups are of concern for nonproliferation reasons. When we say nonproliferation, we mean chemical, biological weapon proliferation (Country Group D:3), nuclear proliferation (Country Group D:2), or proliferation of missiles which can deliver these weapons (Country Group D:4).

Country Group E, as I mentioned, these are your embargoed or terrorist-supporting countries. When we say terrorist-supporting countries, that's a designation by the State Department that the country has provided support for international terrorism. And some other countries that are no longer terrorist supporting but are still embargoed are in Country Group E. And as we discussed, you need to make sure on a country-by-country basis that particular license exceptions are authorized for that destination before you use them.

With export control reform (ECR) we've added a couple of new country groups that are very tightly tied to the 600 Series items, these military items that are subject to the EAR. That's Country Group A:5, which are close military allies, which are also generally in the multilateral regimes. And then on the opposite end of the spectrum of concern, Country Group D:5, which are the U.S. arms-embargoed countries. And for those of you who also deal with the International Trafficking in Arms regulations, or the ITAR, the Country Group D:5 is the same group of countries that are in the ITAR's Section 126.1. So these are the U.S. arms-embargoed countries and they are of concern for military items.

So we've looked at the restrictions on all the license exceptions, and we've looked at the various country groups. I'm going to start talking about what's in the most used license exceptions.

We're going to start with the List Based license exceptions. And they're called List Based because they are very strongly tied to the actual item and the classification of a particular item under a particular ECCN on the Commerce Control List. So that's the list we're talking about.

And if you actually go to the Commerce Control List and look under the ECCN for your item, you will see a heading that says List Based License Exceptions. So you're going to need to be looking at Part 740 for the license exception, but also looking at the Commerce Control List, which is Supplement No. 1 to Part 774, and your particular ECCN for your item.

So we're going to talk about limited value shipments (LVS), shipments to group B countries (GBS), civil end users (CIV), technology and software restricted (TSR), and strategic trade authorization (STA). These are the List Based License Exceptions, and you can see as we referred to earlier, each one of them has a sort of a shorthand acronym, LVS, GBS, CIV, TSR, and STA. STA does not appear under the List Based License Exceptions, but certain ECCNs include a Special Conditions for STA paragraph, which is tied to the list, which is why we are discussing it along with the list based license exceptions.

As you start looking through these license exceptions, you want to remain aware that this is an item and a destination for which generally a license is required. So it can kind of help you keep track of the license exceptions if you think about if there's a license required for this, what's the rationale for allowing a license exception. You know, why do we not need to get an individual license for this.

In this first license exception, LVS or limited value shipment, which is in Section 740.3, the rationale is that it's a small amount of usually a nationally security controlled commodity going to a destination that is not of national security concern. So the country or destination is in Country Group B.

Now different ECCNs have different values that are the threshold value for using LVS. For instance, most of the 600 Series ECCNs, the commodities for which you can use LVS, usually the value limit for that is \$1,500.00, so you can't go over \$1,500.00 per shipment. And it must be destined to Country Group B.

Now different ECCNs may have different values. Some of them go up as high as \$5,000.00. And you would find this value under the specific ECCN.

Now if you go to Section 740.3, you'll notice that in addition to giving you the two basic criteria, which is the value and the idea that it's a low value shipment, and that it's going to Country Group B, there are a lot of rules to make sure that you're actually talking about a limited value shipment, a small amount of this particular commodity. For instance, the total value of exports per calendar year to the same ultimate or intermediate consignee of commodities that are under one ECCN can't be over 12 times the LVS value limit for that ECCN. So you can't use this to ship, you know, a large amount. We're talking about something that's actually a small amount. There are also rules about not splitting shipments, not soliciting smaller orders. This is used often by people for, say, samples or a one-off here or there, or a repair in some cases. It's something that's really a small amount of the item.

License exception GBS or Country Group B shipments in Section 740.4 doesn't have that kind of limitation. The rationale behind this license exception is that it's allowing you to ship commodities that only need a license for national security reasons and they're going to Country Group B, which, again, is the group of countries that's not of concern for national security reasons. So you make sure you're shipping to Country Group B, and you check under your ECCN to make sure that the commodity is eligible. And the formulation is it says GBS Yes or N/A. We actually have an example of how you would check that. Also be aware that for certain ECCNs, the entire ECCN may be eligible for the list based license exception, but in many ECCNs only certain paragraphs are eligible. Read the ECCN carefully.

So here we have an excerpt from the Commerce Control List, and you see your ECCN, which is 3B001, which is semiconductor manufacturing equipment. So right underneath that, you see the license requirements that we referred to. It's referring you to our Commerce Country Chart, and that's in Supplement No. 1, Part 738. It sends you to NS Column 2, which is the National Security Control, AT Column 1, which is Antiterrorism Control. And if you do that, and you line your country row up with your NS column, and the only "X" that you have is that column in the NS column, then you go down and see if you can use GBS. Now this doesn't say GBS yes for everything. So there isn't a blanket authorization for GBS for 3B001, which is what I was referring to about the importance of reading the ECCN carefully when determining whether a list-based license exception may be available.

So if you have something that is listed out, the specific technical parameters are listed out in paragraph a.3 of this ECCN, which is not on the slide, see a.3 is not eligible because it says yes except a.3, etc. Whereas if you have something that's in a.2, then yes, it is eligible.

So that is how you actually walk through the process of determining whether or not you can use GBS. Next we come to CIV, which is Civil End Users, and that's in Section 740.5.

Now you can see what this has in common with GBS in that it is for items that require a license for National Security (NS) reasons only. So you found that National Security "X" in the box. But here you're not talking about Country Group B, you're talking about Country Group D:1, which is the countries of concern for national security reasons. And that's D:1 except North Korea for purposes of License Exception CIV. Because North Korea is also in Country Group E, so they're much more restricted and you would need to go through the embargoed and sanctioned destination part of the EAR, Part 746, to make sure that you can use a license exception for them (North Korea).

So if you think about, again, the rationale, and as you might guess there are fewer items that are eligible for CIV than there are for GBS. And in addition to the particular country of destination and this national security control and this CIV yes under the ECCN, there's a further restriction in that you must be sending these items for civil end uses and for civil end users. Because remember we've got, you know, it's a national security country of concern under D:1. It's a national security reason for control, so we want to make sure that it's not going to the military. That it's only going to civil end uses or end users. And, again, you would look under the ECCN and see if it's CIV yes.

Now GBS and LVS are used only for commodities. CIV is used for commodities, but you may also, in certain cases, use it for software or technology. And, again, it will tell you that right under the ECCN.

Technology and software under Restriction, TSR. The requirements for using this license exception are spelled out in Section 740.6. And, as the name tells you, TSR is authorizing certain technology and software. So in a way it's similar to GBS. The country of destination needs to be in Country Group B. And, again, it needs to require a license for national security reasons only. Similarly, you look under the ECCN and see if it says TSR yes.

But remember when we were talking about license exceptions and how they're general authorizations and you adhere to the terms and conditions and you can just use them. Remember we talked about the fact that you may still need paperwork for it. And TSR is one such license exception. Even once you've met the destination and the item restrictions, before you ship under this license exception, you need to get a written assurance from your consignee that says, basically, that they won't re-export the technology or software to Country Groups D:1 or E without either getting authorization or getting a license or using some other eligible license exception so that we know that it's shipped to Country Group B and then it doesn't go outside of Country Group B without the proper authorization. You would need to get this written assurance before you use the license exception. Some people get it as a letter, you know, on letterhead, that assurance. Some people just get it in email. That is written. Other people would prefer to write it into the contract, and that's fine as long as your consignee realizes that the actual export control on the technology may still be in effect even after the contract is not any more.

For License Exception Strategic Trade Authorization, I'm going to turn it over to my colleague Bill Arvin.

Thank you, Hillary.

License Exception Strategic Trade Authorization, or STA, has been in existence now for about five years. It was created in the summer of 2011. It was designed to facilitate exports in certain situations where the risk of diversion to improper uses is very low. And in those kinds of situations it can produce significant savings in time and effort on the part of both the exporter and the consignee.

To do this, STA is somewhat selective about what kind of destinations are eligible. It's destinations that are regime members and that have strong export control regulations. It's also selected items, limited numbers of items that are available. And it's selected in the sense of getting consignees and exporters who are committed to export control compliance.

And the principal ways it does this are through these four steps that are outlined on this slide. These are requirements that the exporter and/or the consignee have to go through in order to use STA.

First one is the exporter furnishes the export control classification number to the consignee. This is important for the consignee to understand what he's getting. It would help the consignee to determine any further reexport license requirements that might apply to it. A reexporter using License Exception STA can pass on the ECCN that he got from the exporter.

Second step is to obtain the Prior Consignee Statement. We're going to go into a great deal of detail on several slides on the Prior Consignee Statement and its contents. I do want to make one point here, a little sub tick on the slide, that one statement can cover multiple items and multiple shipments. This is the reason that STA can often be a real time saver for companies that use it. STA can replace multiple licenses: so long as the items remain the same, the ECCNs remain the same, the parties remain the same, the statement can still be used.

Third step is for each shipment, the exporter is going to have to notify the consignee in writing. The writing is going to have to identify the STA items or have to state that the entire shipment is being made pursuant to STA. This is important because the consignee has made that Prior Consignee Statement in which it made some commitments. It's very important that the Consignee get exact notice every time that it gets a shipment to which the commitments it made in the Prior Consignee Statement apply.

Finally, there is a recordkeeping requirement. The exporter has to keep records that correlate each STA shipment that it makes with the related consignee statement. This, again, is so we can keep track if the government wants to come out and review it, verifying that each shipment was made in accordance with the requirements.

There are two basic authorizations in STA. This is when I talk about the selected destinations. Country Group A:5 has 36 destinations, and STA can be used if the license requirement is based on – the license requirement for the transaction, you'll notice transaction is emphasized here [on the slide] – is based on one or more of these requirements: national security (NS), chemical-biological (CB), nuclear proliferation (NP), regional stability (RS), crime control, and/or sensitive items (SI)(that's basically hot section technology for jet engines).

As mentioned, transaction is emphasized there. It is the license requirements that apply to the transaction that must be met here. That isn't necessarily all of the reasons for control that apply in the given ECCN. And in essence is the reasons for control that have an "X" in the box for the country to which you intend to ship. Those are the ones that you have to meet in order to be able to use STA.

As sort of a smaller group of countries, eight destinations that are in Country Group A:6, only national security is the only reason they can apply to the transaction to be eligible for STA to these countries. And even some national security items are excluded. Those exclusions basically apply to national security controlled items that are on the Wassenaar Arrangement Sensitive List, and they are identified in the specific ECCNs covering STA under the Special Conditions for STA section.

Limitations. Well there's some things that STA is not for, can't be used for. License Requirements in Part 744. Those are the end use/end user license requirements. They relate to end uses related to missile development, chemical and biological weapons development, unsafeguarded nuclear facilities or nuclear weapons development. They also apply to some end users or recipients. A number of parties who are on the SDN list [the Department of Treasury's Specially Designated Nationals list] are also subject to some license requirements that are generated in Part 744. And, of course, the Entity List, as well as the Unverified List, are in Part 744. So if your license requirement stems from one of those things, a party is on one of those lists or it's one of those activities, STA is just out of the question, you can't use it.

Part 746, they're sort of embargoes and special destinations. It would be Cuba, Iran, Iraq, Syria, North Korea and some Russian industry sector sanctions. Those, again, if your license requirement comes from Part 746, you can't use it. The following reasons for control listed there: Encryption items (EI). Short supply (SS). Surreptitious listening devices (SL). Missile technology (MT). Or chemical weapons convention (CWC) reasons. If that's the reason for control, can't use it.

And there are some specific ECCN limitations. I didn't try to spell out all the ECCNs or ECCN paragraphs here. The list is actually in paragraph (b)(2)(ii), of Section 740.20. Just some examples of the kinds of things that are in those ECCNs: restraint devices, stun guns and stun devices; some pathogens, toxins; some jet engine technology and software; light amplification devices; thermal imaging; and some microwave amplifiers.

There are also a few limitations that are listed sometimes in specific ECCNs, particularly in the 600 Series, which are specified in the Special Conditions for STA section of the respective ECCNs, where those additional limitations on the use of STA apply.

There are some additional limitations in STA that apply only to the 600 Series items. The first one is the destination has to be a Country Group A:5 country. Well that is basically a pretty broad group, 36 countries, but it's still – it's not everywhere. Nothing like GBS, for example.

The second one here, the second bullet point, I'm going to go into in a little more detail. We'll be talking about the consignee statement. But essentially the end use/end user for the item has to be a special type of government agency in Country Group A:5 or the United States government. Or some other end use

that's been authorized by the United States government through a license [or other approval such as a manufacturing license agreement (MLA), technical assistance agreement (TAA) or warehouse distribution agreement approved by the Directorate of Defense Trade Controls]. Or the item is going to be returned to the United States.

For certain things you need to get prior government permission before you can use STA. Basically those are end items. They're – I didn't spell out the ECCNs here [on the slide], but it's basically 0A606 for military land vehicles, 9A610 for military aircraft, 8A609, I think, for ships, and 8A620 for submarines. The submarines, actually both paragraph a and b [8A620.a and .b], both military and certain commercial submarines, you would have to get permission from the government. It would be an interagency review process, and BIS would then tell you if you had permission if you sought this permission. [Once a decision was made to allow STA for that specific end item, the exporter, reexporter or transferor could use STA, as well as other parties that met the requirements of STA. BIS would communicate the determination of STA eligibility, by subsequently amending the respective ECCN to specify STA was available for the specific end item that was approved under the STA eligibility request.] So far as I know, we haven't actually received any requests for authorization to use STA for these commodities, and bear in mind that it applies to the end items. You don't have to get U.S. Government permission to use STA for land vehicle parts, aircraft parts, ship parts, submarine parts. It's the end items for which this special permission is required.

Additionally, certain parties on the transaction have to have been approved on a previous license [or other approval]. That license [or other approval] could have been issued by Commerce or it could have been issued by State. The parties don't all have to be on the same license [or other approval]. They could have been on different licenses or other approvals. The purpose of this is to make sure that parties using STA for 600 Series items have at least to some degree been previously vetted by the United States government. So basically any type of Commerce or State license [or other] approval would serve for this purpose. And the no "600 Series for major defense equipment" if the value in the contract exceeds \$25 million. I'm not sure we actually have gotten any major defense equipment onto the CCL yet, but if it does happen, you won't be able to use STA for exports, again, if the contract is more than \$25 million.

Okay. The Prior Consignee Statement. We are going to devote several pages here to the – or several slides – to the Prior Consignee Statement and try to go through some of them to give a little more detail than others.

Name of the consignee, I think that's pretty obvious. We need to know who the party is who is making the statement.

The item descriptions and the ECCNs. This is one that I mentioned a little bit early on. This is where if you're in, say, a supplier-manufacturer relationship, you want to take some time and some effort to make sure that you are describing all the things you are going to need under STA. That's how you will save yourself a lot of subsequent license applications. This may take some working together with the supplier and the manufacturer, but it's probably worth the effort.

The consignee statement has to name the party who furnished the ECCN to the consignee, and that, of course, is going to be the exporter[or in the case of reexports or transfers (in-country) authorized under STA, the reexporter or transferor]. The consignee must acknowledge that if the item is shipped under STA, you can't use License Exception APR Paragraphs (a) or (b) authorizations. The reason for that is that APR is based on approvals by the government from which the reexport is taking place. There are some instances when APR can be used to send some fairly sensitive items to countries which we have some serious national security concerns, so STA, once you use STA, you're foreclosing APR for those items forever. Or at least paragraphs (a) and (b) of APR.

The consignee would also agree to obtain a prior consignee's statement when it's using STA to reship the items that it received under STA. Actually, the consignee would have to get that statement if he's reexporting items under STA regardless of how he received them. The consignee must agree that it's not going to export, reexport, or transfer (in-country) these things in violation of the EAR and has to agree to

provide documents relating to the transaction, including the Prior Consignee Statement or the other shipping documents related to the transaction, to the United States government upon request. And then we need to know the name and the title of the person who is making this commitment on behalf of the consignee.

There's a couple of points on the Consignee Statement that only need to be included when the items are 600 Series items. You do not need to include them generally if you're not using STA – or if you're using STA for things that do not include any 600 Series items.

Consignee has to state that the item will be shipped to a destination in Country Group A:5. And if it's going to an individual human being [referred to as a “natural person” in the regulations], that individual would have to be a national of Country Group A:5.

The ultimate end user is the appropriate type of agency of an A:5 government, or it could be of the United States government as well. Ultimate end user could mean two different things here, and they're both outlined in the statement specifically. It could mean a situation in which the item that's being exported under STA will ultimately be sent to that appropriate agency of an A:5 government. Or it could mean a situation in which that item being shipped under STA is being sent to someone else other than the government in an A:5 country who is going to use the item in order to develop, produce, repair, maintain, operate, whatever, on behalf of that A:5 government. The appropriate agencies are basically the military forces, the police, paramilitary, customs, search and rescue, firefighters, those kind of things.

Another use that you could be permitted under STA for 600 Series items is if the item is just going to be returned to the United States.

Or, finally, if the United States government has approved the end use, you could use STA for that. An example of that might be items being shipped under STA 600 Series parts going to service military aircraft. They are being shipped to a country in A:5. And it's going to service the aircraft that belong to three different A:5 governments plus one government outside of Country Group A:5. If the United States government has issued a license approving that servicing on the non-A:5 country's aircraft, you could use STA, again, for those parts that are going to be used to service that non-A:5 aircraft. [Remember though that STA can only be used to authorize an export, reexport or transfer (in-country) to or in an A:5 country. In such cases, you are using License Exception STA to export to the A:5 country and because there is a license or other approval to authorize the subsequent reexport to a non-A:5 country, then the original export can be authorized under STA.]

Finally, non-government consignees of 600 Series items and items that end in 515, those are basically items related to commercial satellites [and other spacecraft related items], would have to agree to permit U.S. government end use checks.

STA can also be used for deemed exports and deemed reexports. Those are in-country releases of technology or source code to foreign nationals. You have to notify the recipient of the EAR restrictions on further release. You can either explain the whole EAR to him and notify him in writing of that, or you can include this in a nondisclosure agreement. Nondisclosure agreement could explain the EAR restrictions or if it imposes a restriction that is at least as restrictive or more restrictive than the restrictions on transfer in the EAR, that would be adequate. As with the assurances on license exception TSR, that restriction on transfer must not have an expiration date, so if it's in an employment agreement that has an expiration date, it must be clear in the agreement that the restrictions on transfer continue after the agreement has expired. Both parties have to retain a copy.

That, in short version, is what STA is currently about, and I will now return the podium to Hillary Hess.

Thanks, Bill.

So that, with STA, concludes the section on list-based license exceptions that are very closely tied to the classification of the item on the CCL, also known as the ECCN or Export Control Classification Number.

There is a different group of license exceptions that we sometimes refer to as transaction based license exceptions. The classification is still important, but whether or not the license exception is available is based much more on what's actually happening in the transaction.

The transaction based license exceptions that we're going to talk about are TMP, which is temporary imports, exports and reexports; RPL, servicing and replacement of parts and equipment; GOV, which is for government and international organizations; BAG, which is personal baggage; and TSU, which is technology and software unrestricted.

So for TMP, temporary imports, exports, reexports and transfers, you'll find a whole list of different situations under Section 740.9 where this transaction based license exception may be helpful to authorize certain transactions of a temporary nature. And you can see the rationale pretty clearly in that these are items that are not permanently exported. They're just going out temporarily and will be back. They will be back within a year in most cases, although if you need to have it out of the country for more than a year, you can apply to BIS to get an extension of the term of TMP so that even with an extension it would be back in the United States within four years. But generally it would come back within a year.

One common use of TMP is tools of trade where you have certain export controlled items that you need to do your job, and you take them out of the country with you and bring them back when you come back. So that's the tools of trade section. And that's a specific paragraph within TMP.

Also a temporary export of technology by U.S. persons. And this is export controlled technology that you would not release outside the United States. You would take it with you and protect it on some type of a device, such as a laptop, or some other device, and there are standards and rules in the actual paragraph governing these temporary exports of technology that talk about how you would protect it with encryption or other secured devices.

There are other situations in which you can use TMP. For instance, exhibition and demonstration, which is useful for trade shows. Personal protective equipment such as body armor can be exported temporarily under this license exception. You can export certain tools to your facility or a subsidiary. If you need to bring a kit of replacement parts to go repair something overseas, you can use this license exception. Or if you need to send out something that you have for inspection, calibration, repair, you can use TMP. And these are all found under paragraph (a) in Section 740.9.

Now paragraph (b) talks about items that are temporarily in the United States. And the title of TMP includes temporary imports. But the EAR really don't authorize temporary imports in the sense that you don't need any kind of authorization to bring something into the United States. Why we refer to temporary imports is that you would use this section of TMP once you've imported something into the United States temporarily and then you need to send it back out, so that TMP helps you get that item, usually a foreign-origin item, back out of the country. It covers the export side of it once it's been temporarily imported.

I know that under the ITAR you do need authorization to bring an ITAR controlled item into the United States. That is not the case under the EAR. We don't have a parallel control to that. So if you have, for example, brought in a foreign-origin item for a trade show in the United States, you can get it back out to its next destination probably using TMP under this Section 740.9 paragraph (b).

The last section of TMP has to do with beta test software. Usually this is software that will eventually be sold as a mass market product, but you need to send it out temporarily ahead of its becoming mass market in order to beta test it. So if you have that situation, you can probably use TMP for that as well.

So RPL is for servicing and replacement of parts, components, accessories, attachments, and equipment. And this is an important license exception. It's found in Section 740.10, and it will allow you to service

and maintain equipment, commodities and software that have been lawfully exported or reexported in the first place. So it's very important to remember that these must have been lawfully exported before you can service them or replace any parts in them.

The rationale behind this is, of course, that, you know, basically it was either already licensed or didn't require a license on its way out, so you have a license exception when you are servicing it.

There are different parts of RPL. The paragraph (a) allows for one-for-one replacement of parts, components, accessories, attachments. And under this particular section, these parts, components, accessories, attachments can be worn out from normal use. And this will allow you to replace these parts components, accessories, attachments without having to wait to get a license for the parts components, accessories, attachments.

Now you can see why it might be useful to have this license exception. If your customer has a broken piece of equipment, probably he or she is going to want that fixed as quickly as possible and a license exception can save you a lot of time over applying for a license

Under paragraph (b), it will also allow your customer to send the item to you in the United States to service it here and then send it back out. Paragraph (b) will also allow you to replace defective equipment so that you sent something out, it's either defective or it just isn't right for whatever reason, you may be able to replace that equipment using RPL.

Certain – depending on the ECCN such as for 600 Series items, certain other items, I think explosive detection devices, there is special recordkeeping for these under License Exception RPL.

Now really one of the main points of using RPL we've got down in the box here, which says no enhancements. So you may think that well, by fixing something you are enhancing it, and that is true in a sense. But what we mean by no enhancements is that you're not improving the basic characteristics or capabilities of what you sent in the first place so that when your customer gets back fixed equipment, or gets a replacement part, component, accessory or attachment, you are just basically making him or her whole. You are not giving him or her something that he or she didn't have in the first place. So that's what we mean by no enhancements. Again if you think about what is the policy rationale for authorizing it under License Exception RPL, this limitation on not allowing any types of enhancements should make sense to you.

Okay, for license exception GOV, I'm actually going to turn this over to my colleague Tim Mooney.

Thanks, Hillary.

So we're going to talk about License Exception GOV, which is another one of our transaction based license exceptions.

GOV has paragraphs (a) through (e), and each authorizes various things related to governments and international organizations. So as Hillary had said, with the transaction based license exceptions, there will be a certain element of the transaction which will point you to which license exceptions you may want to take a look at. So if your export, reexport or transfer (in-country) involves the government, particularly the U.S. Government, or international organization, and your transaction is subject to a license requirement, then License Exception GOV is probably a good one to take a look at because it may be available.

As I said, there are paragraphs (a) through (e). We're not going to go over each of the different paragraphs, so we're going to focus on the changes that have been brought about from export control reform (ECR), in particular the broadening and updating of the United States Government authorization under License Exception GOV.

So what is authorized under the current License Exception GOV? We have paragraph (b) which authorizes various exports for the U.S. Government agencies or personnel, including contract support personnel. GOV also authorizes under paragraph (c) agencies of cooperating governments and their diplomatic and consular missions, and also NATO.

Primarily the changes we're talking about with the United States Government came out of the initial ECR Implementation rule which was published on April 16, 2013, and which became effective October 15, 2013. But we also, as part of export control reform, updated the cooperating government provisions on June 5, 2014, to add NATO and agencies of NATO to treat them the same as cooperating governments for purposes of GOV. So that's another updating of the GOV provisions.

We also have, in terms of nuclear safeguards, with the Chemical Weapons Convention, with the International Space Station, there's three separate paragraphs under license exception GOV which authorize, under stated criteria, certain exports, reexports, or transfers (in-country) that the U.S. Government has an interest in authorizing under GOV.

And the heart of this presentation that we're going to talk about is the broadened United States Government authorization, or paragraph (b)(2), which we're going to go over, in particular paragraphs (b)(2)(iii), (b)(2)(iv) and (b)(2)(v). And these are for exports, reexports, and transfers (in-country) made for or on behalf of a department or agency of the U.S. Government and also DoD-directed shipments. So we broadened the scope of the United States Government authorization to allow certain additional exports, reexports, or transfers (in-country) that are not consigned to and for the official use of the United States Government but they're very closely tied, and they're basically being exported, reexported, or transferred (in-country) in order to further the U.S. Government interests of the specific agency.

We're going to talk a little bit about here, that we added three paragraphs that authorize DoD-directed shipments. So in terms of the broadened authorization for the United States Government, we wanted to track with what the U.S. Department of Defense could do under the ITAR, so we brought some of those similar ITAR authorizations under the EAR by adding them to our License Exception GOV. Because one of the objectives of export control reform, in particular, was to help the U.S. Department of Defense with interoperability issues with our close allies overseas. So having that broad authorization in relation to those paragraphs of GOV, which is only available for those DoD-directed shipments, which we're going to talk about in a little bit more detail, helps to achieve that objective of export control reform – by improving interoperability.

So there's a lot in License Exception GOV. If you're involved with a transaction that involves the United States Government, in particular, I definitely encourage you to look at License Exception GOV, and it's probably going to be quite useful for you.

So we're focusing in this presentation on the changes that we made for License Exception GOV. Similar to License Exception TMP, which we rearranged and streamlined as part of ECR implementation, we also did that with License Exception GOV. We also made some substantive changes in terms of broadening the scope of the United States Government authorization.

The paragraph (b)(2)(ii), that was previously in license exception GOV (United States Government) authorization, and previously that was limited to items consigned to and for the official use of the United States Government. Therefore, in the past, we would always ask you if you called BIS and said, you know, I'm doing this for the Air Force or I'm doing that for the Army; we would always ask you, well, is it consigned to and for the official use of the Air Force. And you'd say, well, no, not technically. Well, in the past prior to ECR implementation, they wouldn't be able to use paragraph (b)(2)(ii) because it was very specific with the criteria. Now the current criteria in (b)(2)(ii), if you're going to use that to export to the Air Force, it would have to be consigned to or for the official use of the Air Force, for example.

But we've broadened that paragraph in two ways. We added a definition for contract support personnel. Now when we say contractor, we don't mean just any contractor. We mean a very specific type of person, who could be, for example, working in a U.S. Government facility that meets the definition of

contract support personnel which we define for purposes of that paragraph in GOV, which we're going to talk about in just a moment when we go over that definition.

We also broadened that paragraph (b)(2)(ii), to address scenarios if the U.S. Government is exporting, for example, to a foreign government or to an international organization, we can also authorize that under that paragraph (b)(2)(ii). Now in that case you're making an export not to the U.S. Government, but the United States Government is making an export to a foreign government or to an international organization. And for those exports we have some additional criteria where it has to be authorized by law and subject to the control by the President by other means.

And we have two other authorizations that we added under (b)(2)(iii)(B), and (b)(2)(iii)(C), where again it's involving, other parties outside the United States where you're helping the United States Government that has an international agreement or a cooperative agreement with a foreign government overseas and you're actually exporting to that foreign government or to that international organization. When we say international organization we don't mean somebody like Doctors Without Borders, we mean, for example, the United Nations, the Organization of American States, so when we say international organization, that's what we mean there.

But we added those additional criteria for those authorizations where it has to be authorized by law, and we interpret that to mean that there is a statute or some other legal authority that authorizes that specific U.S. Government department or agency to engage in that activity outside the U.S. that may involve the export, reexport, or transfer (in-country) of items subject to the EAR. So, for example, like the Foreign Assistance Act of 1961 for USAID, or for NASA for the National Aeronautics and Space Act of 1958. So there's an authorization under law that indicates that these people (United States Government departments or agencies) have a reason to be involved in these types of transactions.

And subject to the control by the President by other means, we interpret that second part of the requirement to mean that there's an agreement approved under what we refer to as a Circular 175 process that authorizes a U.S. department or agency to enter into a binding agreement with a foreign government or international organization to export, reexport, or transfer (in-country) items, provided the items are referenced in or would fall under that category of items referenced in the agreement approved under the Circular 175 process.

So the only authorizations under the broadened United States Government authorization where those additional criteria come in are those ones where you are exporting for a foreign government or for an international organization. And in those cases, we want to have those additional criteria tied to the Circular 175 process.

So we also added, as I said, the addition of a new paragraph (b)(2)(iii), and there's five paragraphs under that which have specific criteria which authorize various types of exports, reexports or transfers (in-country) which are being made for or on behalf of the United States Government.

We also have three authorizations for DoD-directed shipments, which we'll talk about in just a moment.

So as I mentioned, we have a new definition of contract support personnel that are to be treated as U.S. Government personnel for purposes of that paragraph (b)(2)(ii). We've actually kind of gone over this a little bit. The new authorization in the (b)(2)(iii) for those exports that are being made for or on behalf of the United States government and then those three paragraphs that authorize those DoD-directed shipments which we'll go over in just a minute in a little bit more detail.

So that (b)(2)(ii), we've already kind of hit on this. These are ones where it's consigned to and for the official use of the United States Government. For example, you're exporting to the United States Navy in Australia, you can use that (b)(2)(ii) in most cases.

And then we also have broadened the authorization to include or for carrying out any U.S. Government program with any foreign government or international organization that is authorized by law and subject to the control by the President by other means. So if the U.S. Government is exporting to a foreign government, they could look at that provided they meet that criteria authorized by law and subject to the control by the President by other means.

We also added that definition of contract support personnel basically treating these persons as if they are part of the U.S. Government. If you went into a U.S. Government facility and you saw one of these people, it would probably be very difficult for you to distinguish between who was the U.S. Government employee versus who was the contract support personnel. And these people, under this definition they're doing a very specific thing per the contract with the U.S. Government. They are persons who provide administrative, managerial, scientific, or technical support under a contract with a U.S. department or agency. And these could be contractor employees of federally-funded research facilities or systems engineering and technical assistance contractors. This is occurring at a U.S. Government-owned facility or under the direct supervision of a U.S. Government employee.

Security contractors would not be considered contract support personnel. The reason why, although they may be performing the contract in a U.S. Government facility, they don't fit under those types of activities that they have to be doing pursuant to a contract.

Paragraph (b)(2)(iii), this is where we've broadened License Exception GOV. Now sometimes people will call and say, I've heard that now if it's going to a contractor for the U.S. Government I can use license exception GOV. Maybe. You need to be careful. There are very specific criteria under paragraph (b)(2)(iii), as well as (b)(2)(iv) and (b)(2)(v) for those DoD-directed shipments where if it's going to a contractor or some other party who is working on behalf of the U.S. Government, of the agency that's going to be authorizing under one of those respective paragraphs, then you can use one of those paragraphs to go to a contractor or some other party who is working on behalf of the U.S. Government.

And it includes under paragraph (b)(2)(iii), which consists of five different subparagraphs under (b)(2)(iii)(A), (B), (C), (D), and (E). And each one of these has specific criteria. So we'll just go over one example because we want to save time for questions at the end also.

So under paragraph (b)(2)(iii)(A), informally referred to as the motor pool authorization – the motor pool type of authorization. So as I said before, under the (b)(2)(ii) where before we would ask you is it consigned to and for the official use of the U.S. Government. So what (b)(2)(iii)(A) says, if you're exporting the items, you have a contract with the U.S. Government, you're exporting the items solely for the use of the U.S. Government, you can look at that paragraph (b)(2)(iii)(A), provided it's going to a U.S. person. So you're going, for example, to the motor pool in Afghanistan. You're exporting the parts or components to basically service the vehicles. And the sole reason why you're sending those for that is the servicing of the U.S. military's vehicles in Afghanistan. So that's what we're talking about when we're talking about broadening the scope but at the same time having the specific criteria, which ties the new GOV authorizing paragraphs closely back to the United States Government.

Now keep in mind that for most of these paragraphs, you're going to need a written authorization from the head of the agency or the department or their designee. So do we expect that you're going to be able to get, a letter from the Secretary of Defense? We understand, probably not. They're probably going to designate that down to an appropriate person. But that's part of the criteria, so we took that into account when revising License Exception GOV. And generally for most of these you're going to have to have a contract with the U.S. Government and you're going to have to have a written authorization and those criteria in GOV that are specified need to be included in that written authorization.

And each of the paragraphs under License Exception GOV authorize various things. But if you're a contractor and you're doing things or any other party who is doing things on behalf of the U.S. Government, then License Exception GOV is definitely an authorization that you want to look at as an authorization. The DoD-directed shipments, as I said, there's three specific paragraphs that are only available for the Department of Defense. As I noted, we added these three paragraphs because we were

trying to help them with their interoperability. The one in particular is that (b)(2)(iv), and that's very, very broad providing that you have an official written directive from the Department of Defense saying we want you to export, reexport this, for us, along with any additional limitations that they include in the official written directive. That's going to be sufficient under that (b)(2)(iv) of License Exception GOV. So that's very broad in terms of the authorization, but again, it goes back to trying to achieve that objective of Export Control Reform of helping interoperability, in particular with the U.S. Department of Defense, with our allies, such as with the Australians, or the U.K., or the Germans, etc., to help with our interoperability.

Now we're going to transition back and cover a couple more of our transaction based license exceptions with Hillary.

Thanks, Tim.

So BAG, baggage, under Section 740.14, covers your personally-owned effects. And in some cases this can mean tools of trade. Now you'll remember we talked about tools of trade under TMP. So tools of trade under TMP, those could be company owned. And under BAG, if you're self-employed or the tools are otherwise personally owned, you could use this license exception to take those with you. So you take them out with you. They're personally owned, not intended for sale, and you can use BAG for them.

Lots of the items for which you would use BAG are not that tightly controlled. Your household effects, for instance. But there are some cases where you can use BAG to take 600 Series controlled personal protective equipment. So this is like body armor, for instance, if it is personally owned and you can take it with your baggage under BAG and meet other specified requirements.

TSU, technology and software unrestricted, under Section 740.14. This license exception also has a lot of pieces to it, one of which is relatively new. Again, it came about with export control reform. It is releasing technology and source code to certain employees of U.S. universities. There's also, for instance, minimum necessary maintenance or repair technology for lawfully exported or reexported items. You may see, for instance, parts sent out under RPL and then the repair technology, as long as it's the minimum necessary for the repair and it's a lawfully-exported item, the technology could go out under TSU.

Most sales technology is not export controlled by virtue of being publicly available. But if you do have sales technology that's not publicly available and doesn't have production or development technology in it, you may be able to use TSU.

You can also use this license exception for certain mass market software. This is software that is sold through retail outlets, over the internet, it's designed to be installed by the user as provided in the General Software Note, or GSN. Just be aware that this license exception does exclude certain high-level encryption software.

So that was the last specific license exception that we're going to deal with before we go to the questions. Just wanted to highlight some of the export control reform-related or associated changes that we've made. One, in 2013 we tweaked Section 740.1 to let people know that if a license exception authorizes reexport, it will also authorize any in-country transfers that you have found a license requirement for that meets the terms and conditions. Remember we did also add those Country Groups, A:5 and A:6, as well as D:5. A:5 is the 36 countries, again, closely associated with 600 Series. A:6 also used in STA for those certain NS items. D:5, the U.S. arms embargoed countries. And, as Tim and I both pointed out, quite a bit of streamlining and tweaking of GOV and TMP.

So that's our presentation on license exceptions. And let's go to your questions.

I'd just like to point out that if for some reason we don't get to your question or if the webinar is over and you think of something else that you didn't think of before, you will have other opportunities to ask it. We have BIS's Assistant Secretary for Export Administration, Kevin Wolf, who does a teleconference, 2:30

Eastern Time on Wednesdays usually, and you can send your question in to him for the ECR weekly teleconference call by using the email ecrweekly@bis.doc.gov. And you can get that information on our website by selecting the “Reform” tab and then the “ECR Teleconference” tab in the drop down menu.

I can't read it from here.

Okay. Yeah, the first one is an STA question.

Question 1: Okay, while Bill's thinking about that one, I'm going to take the second question, which is the following question. Is the AES, Automated Export System, accessible to foreign companies?

Answer: Actually, no, that's not. The AES is the system that we use in the United States where you enter your electronic export information (EEI). So it's not necessary, and it's basically clearing U.S. Customs. So you don't use it for foreign countries. However, I would like to point out that our licensing system, which is Simplified Network Application Processing Redesign, or SNAP-R, which you can get to through our website, that is accessible to foreign companies. So if you have an EAR-controlled item, and you want to reexport it from one non-U.S. country to another, and you need a license, then you absolutely can get into the SNAP-R system to apply for a reexport license. You may also use the SNAP-R system for submitting classification requests to BIS.

Question 2: Okay. I'll take the first question. It says, for STA technology transfers, is it necessary to obtain a Prior Consignee Statement? Must we log each transfer of technology under STA?

Answer: The answer to that is, it depends. If you are transferring technology across a border, say from the United States to Germany, that's going to be treated like an export under STA. You would need to obtain the Prior Consignee Statement. However, if you are transferring that technology to a foreign national within a single country, must notify the recipient of the software source code or technology of the restrictions upon further release of the software source code or technology. The notification must either expressly inform the recipient that the EAR impose limits on further disclosure or must be in the form of an agreement in which the recipient agrees to limits on further disclosure. Any such agreement must impose limits that are equivalent to or more restrictive than all limits on further disclosure that are imposed by the EAR. The notification must be in writing and a copy of it must be retained by the party making the release and the recipient of the release. The notification may be in a separate document or included in a document such as a contract or a nondisclosure agreement. If the document has an expiration date, it must provide that the restrictions on disclosure do not expire.

Question 3: Do you log each transfer of technology?

Answer: Well, if you are actually shipping physical documents, you're making those kind of transfers, you probably do. I think you'd want to do something to make sure you are taking steps to ensure your transfers are correlated with the STA statement. Now I realize this could be a problem if you got every single phone call that might involve engineers talking to each other, but at least certainly when you're transferring documents that involve the technology, anything in writing, I think you would definitely want to correlate that with the statement.

The other situation is if you are transferring that technology within a single country. And that one was the one where you had to notify the recipient of the technology of the EAR requirements as, again, you're transferring to a foreign national within a single country. In those instances you would not have to get the Prior Consignee Statement, you don't have to keep a log. You would probably be using that

nondisclosure agreement to meet the requirements, and that's in lieu of the other STA requirements for transferring things across a border.

Question 4: Okay. What if your item is a widget that is integrated into surveillance equipment. Do you classify as your part, based on your part or on the end system?

Answer: Generally, and, you know, there are lots of complicated fact patterns, but as a general rule, you classify what you are shipping. So you have a – if this widget is going out of the United States and later it's going to be incorporated in another country into a surveillance system, you classify this when it's going out of the United States. Now if it requires a license, in the End Use box you're going to put, you know, to be incorporated into the surveillance system. But as a general rule, you classify what you are actually shipping.

Do you want to do that one? Okay.

Question 5: What is the current policy at BIS for U.S. exporters who choose to apply for a Commerce license instead of using license exception STA? Will the license application be returned without action?

Answer: The answer is, it shouldn't be. Use of STA is voluntary. We've told OMB that it's voluntary, in our Paperwork Reduction Act Statement for that. I think our senior officials have said it's voluntary. So it should not get returned without action solely because it's a transaction that's STA eligible.

But if you're applying for a license for an STA eligible transaction, although you have the ability, of course, to apply for a license for an STA-eligible transaction, we definitely encourage you to look at License Exception STA. Because, as Bill went over, there's a lot of advantages to using a license exception when available compared to using a license. You don't have, for example, any limit in terms of the quantity or the value that you can use under License Exception STA. So that is a clear advantage of using License Exception STA, when available. If you're using an individual validated license, you are going to be tied to what's the value under that particular license. You're going to be limited, in terms of timing, compared to being able to use license exception STA. For example, if you want to use STA this afternoon, you can do that. I mean, if you can get that Prior Consignee Statement, and you tick off the other blocks that you need to do under STA, you can be ready to ship this afternoon before the end of the business day. You can, request expedited treatment for a license application. For example, if there's an aircraft on the ground or something like that, but, if it's not something extraordinary like that you likely won't be able to receive expedited review of the license application. And even for an aircraft on the ground, it's probably going to be highly unlikely you're getting a license if you apply for one this afternoon that same day.

So there's a lot of advantages to using STA. And we've seen a steady increase over time as people become more familiar with STA, and seeing the benefits of STA, of moving more and more towards using it.

All right. Okay.

Question 6: When referring to a license exception as being available if an item is controlled for national security reasons only, can you confirm that the AT reason for control does not count in this evaluation?

Answer: Okay, I'm glad we got this question because this does throw people sometimes.

When you go to the Commerce Control List, you are pretty much not going to find any item under a particular ECCN that has an NS control that doesn't also have an AT control. So that when we're talking about, for instance, GBS eligibility, one way of looking at it is that the AT control doesn't count. The other way of looking at it is that unless you're shipping to a terrorism-supporting country, there is no "X" in the box for AT. So really when you're looking at these National Security based license exceptions, you're looking at where you have the "X" in the box. And that is distinct from what controls the actual item may have on it on the Commerce Control List. You have to have found that "X" in the box, and that's what we were talking about with only requires a license for national security reasons.

Part of this is we don't really have a term of art for controlled, so it gets used in different contexts. But really, if you have an "X" in the box for AT-1, you're going to have a whole bunch of other controls anyway, and GBS is going to be out anyway. So when we're talking about GBS, when you look under the ECCN, you may see an AT-1 control, but it does not, in effect, count if there is no "X" in the box for it.

Also keep in mind that as we mentioned earlier that Country Group D:1 and B are mutually exclusive. However, certain countries that are in Country Group B may also be identified under Country Group D:2, D:3 or D:4 – meaning that the license requirements, the number of "X"s that appear in the columns for Country Group B countries is not always the same. For example, one country may have an "X" in the box for NS 2 and NP 2, but another Country Group B country may only have an "X" in the box for NS 2. In both cases, the Country Group B countries would not have an "X" in the Box for the AT control, but if that ECCN was controlled for NS 2 and NP 2 and GBS was indicated as yes, the Country Group B country that has an "X" in the box for NS 2 and NP 2, could not receive commodities under GBS, whereas the Country Group B country that only has an "X" in the box for NS 2 could.

Question 7: Okay, TSU. Two things about this question. The question is, can TSU be used for 5D002 and 5E002 because 5D002 is controlled for NS-1 and AT-1?

Answer: Okay. TSU, remember, has a lot of little pieces to it. And generally it is not available for 5D002 or 5E002. These EI, or encryption controls, are excluded from a lot of different license exceptions, for instance, when we talked about mass market under TSU, so they are excluded for that.

Most of the time if you are dealing with 5D002 software or 5E002 technology, the license exception that you're going to be dealing with is one that we did not actually talk about today, and that's license exception ENC, for Encryption.

Okay. So GBS question. Oh, wow. Okay. This is good. This is like a whole fact pattern here. Okay, why don't you do the 600 Series part, and I'll do that one.

Question 8: For 600 Series parts, does the prior permission need to be from the Department of State Licenses and/or Department of Commerce Licenses, or is one or the other acceptable?

Answer: Okay, there's two possible things we're thinking about here when we're talking about prior permission or prior authorization. One was the four categories of end items where you had to have specific approval in order to use STA for those items. That, again, would not be a prior license or other approval from the Department of State or Commerce, you would actually be applying for that at the time that you wanted to start using STA for those items.

The other situation the questioner might be referring to in this question is the requirement that the purchaser, intermediate consignee, ultimate consignee, those parties have been approved on a prior license or other approval issued by the Department of State or the Department of Commerce. And it could be either or both as long as every one of those named parties was approved on some license or

other approval. It doesn't have to be on the same license or other approval. It also doesn't have to be on a license or other approval that was issued to a company as an exporter. It merely has to have been approved on some license or other approval. And that one, again, could be State, Commerce, or you could even mix them up.

Question 8: Okay, there is a fact pattern related to GBS. If the country group is Country Group B, the ECCN is 3A001.b.10, can GBS be used?

Answer: Now there's some other information on the end uses, but actually if you go to 3A001 and you look in the GBS paragraph, it says yes for – oh, wait, it says yes for .b.10.

Yes.

Okay. So it says yes for .b.10. So you can use GBS for that system. Now it says, okay, there may be a military customer that would use the product for a gathering and monitoring system for intelligence, so with GBS there's no real proscription on military end use, so that doesn't automatically disqualify you. You would want to look at other facts of the transaction, though. Make sure that, you know, it may be Country Group B, but make sure that it's not going to an entity or other person that is a "proscribed party." Venezuela is in Country Group B, but there are certain military end use restrictions, certain other things like that you want to look up before making a determination that you can use License Exception GBS. But as a general rule, it says .b.10 is eligible, so most likely you would be able to use GBS for this commodity.

Now we've got two minutes left, so let's see.

Question 9: How is this different, [Hillary Hess - I'm assuming this is a question about License Exception TMP]. How is it different from a Carnet shipment?

Answer: Carnet is not actually an export control authorization. It has more to do with ease of getting things through different countries' clearance and customs procedures, so a Carnet does not authorize your actual export, from an export control standpoint. And TMP probably doesn't do for you what a Carnet would. So they're separate.

Question 10: Yeah, let's see what other questions we still have. What are the special recordkeeping?

Answer: Oh, I don't know about that. That's not a short question that we can address in the remaining time we have for today's webinar, so will need to address this one in an upcoming ECR teleconference.

Question 11: Will we get a copy of these slides after the presentation?

Answer: There's a materials tab right on the viewers webcast screen. Okay, there's a materials tab right on the webcast and you can download them.

For any of the questions we haven't gotten to, we will address in upcoming weekly ECR teleconferences. So if you're interested in participating in those weekly teleconferences, if you go to the main BIS website, bis.doc.gov, click on the "Reform" tab and the home page. Then click on the link for "ECR teleconference" in the drop down menu, and you can find the call in number and passcode for participating in those. We generally do those each Wednesday at 2:30 Eastern Time.

All right. Thank you very much.